IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No.1114 of 2007
Date of decision: 6.3.2009

Pepsu Road Transport Corporation, Patiala and others.

-----Petitioners

Vs.

Prem Pal.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE JITENDRA CHAUHAN

Present:- Mr. R.S. Ahluwalia, Advocate
for petitioners.

ORDER:

1. This second appeal has been preferred by the defendant-Pepsu Road Transport Corporation, Patiala against decree for declaration granted in favour of the respondent/plaintiff, setting aside imposition of penalty for the misconduct of embezzlement, only on the ground that the penalty was vitiated on the principle of 'double jeopardy' as apart from stoppage of two increments with cumulative effect, wages beyond subsistence allowance for the suspension period were withheld.

2. Learned counsel for the appellants submits that the substantial question of law which arises for consideration is as under:-

> "Whether withholding of wages beyond subsistence allowance for the period of suspension in addition to imposition of penalty for the misconduct can be held to be illegal?"

3. The respondent-plaintiff was employed with the appellants as Conductor. On 6.5.1989, the impugned order of penalty Ex.P-1 was passed which was subject matter of the suit apart from other issues. This matter was considered under issue No.1. The Trial Court dismissed the suit as barred by limitation. The appellate Court decreed the suit with the following observations:-

> "Learned counsel for the contesting respondents has not been able to rebut the submission of learned counsel for the plaintiff/appellant reproduced in the foregoing para. Admittedly, two punishments have been granted to plaintiff/appellant through order dated 6.5.89 Ex.P3 stopping two annual grade increments with cumulative effect and plaintiff not to be paid any thing over and above the subsistence allowance during the suspension period. Admittedly, two punishments could not be awarded for the lapse shown by the plaintiff/appellant in the instant case and only one punishment could be provided to him which has not been done."

4. We have heard learned counsel for the appellants. None appears for the respondents, inspite of service.

5. Learned counsel for the appellants submitted that the lower appellate Court erred in law in holding that direction of not paying wages for the suspension period beyond the subsistence period was not permissible on the ground that it amounted to two punishments. He relies on judgment of the Hon'ble Supreme Court in ***Commr. of Rural Development and others*** ***v.*** ***A.S. Jagannathan*** AIR 1999 SC 3368, in support of his submission.

6. We find merit in the contention raised. It will be appropriate to reproduce the relevant part of the order Ex.P-3:-

> "Shri Arjan Singh, T.M. was appointed as Enquiry Officer to hold the department enquiry against him vide order No.691 dated 7.2.89. The Enquiry Officer submitted his enquiry report on 10.4.89 in which charge No.1, 2 & 6 have been clearly proved against the conductor and also proved the negligence in performance of duties. He was issued a show cause notice for Removal from service vide memo.No.190/PHC/E/BLD dated 12.4.89 he replied the same in which he requested for personal hearing. He has been heard in person on 27.4.89. I have also seen his previous service record. Taking a lenient view he reinstated in service with immediate effect. His Two annual grade increments are hereby stopped with cumulative effect. He will not be paid anything over and above the subsistence allowances already paid to him during suspension period."

7. In ***A.S. Jagannathan*** (*supra),* it was observed:-

> "5. ..... The disciplinary authority, in the present case, was entitled to impose the punishment of stoppage of two increments without cumulative effect. At the time of passing the final order, the disciplinary authority was also entitled to pass order relating to the suspension period pending enquiry. It has directed that the period during which the respondent was under suspension be treated as service period, but without pay. The order must be read as a whole. In the present case, the disciplinary authority has awarded punishment and given directions looking to the nature of the charges proved. The Tribunal was not entitled to interfere with the punishment so accorded."

8. The matter is fully covered by the above observations of the Hon'ble Supreme Court.

9. Accordingly, we answer the question in favour of the appellants and against the respondent.

10. As a result of above, this appeal is allowed. The decree granted against the appellants and in favour of the respondent is set aside and suit of the respondent is dismissed. There will be no order as to costs.

(ADARSH KUMAR GOEL)
JUDGE

March 06, 2009
ashwani

(JITENDRA CHAUHAN)
JUDGE